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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
OF THE UNITED STATES OF AMERICA

In the Matter of	)	
	)	
Amendment of the Commission's	)	RM - 8577
Rules to Preempt State and Local	)	
Commercial Mobile Services	)	
Providers	)	DOCKET FILE COPY ORIGINAL

RESPONSIVE OPPOSITION  
TO PETITION FOR RULEMAKING FILED BY  
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATIONS

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Amendment of the Commission's  
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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Regarding that certain Petition for Rulemaking in the above-entitled matter, filed by the Cellular Telecommunications Industry Association ("CTIA"), the County of Fresno, in the Central Valley of the State of California, responds in opposition as follows:

Zoning and other similar regulations affecting the location and construction of new commercial mobile radio service ("CMRS") towers and appurtenant structures are promulgated and enforced on a local and state level. This is as it should be. Localities and states are directly accountable to the people who are affected in their daily lives by siting decisions and construction standards for cellular telephone tower antennas and other physical structures. Local, community-based land use, zoning and other regulations in this County accommodate the placement of towers and transmitters needed by the cellular companies. Such companies routinely obtain permits for siting and construction.

No showing has been made that the cellular industry has been unduly and adversely affected by state and local land use conditions or requirements, to the extent that location

and construction of the industry's communications equipment has been **barred or impeded**, as asserted by Petitioner. To imply that such has occurred misleads the Commission.

Moreover, the California Public Utilities Commission ("CPUC") already partially preempts local regulation of the cellular industry, to that industry's benefit. In response to the growth of the cellular telephone industry and concerns which were then perceived as surfacing state-wide regarding where cellular towers were placed, CPUC instituted rulemaking on its own motion in early 1990, and on March 28, 1990, issued General Order (G.O.) 159.

G.O. 159 provides that a cellular radiotelephone utility, in order to expand its facilities beyond the initial system approved by the CPUC, must receive all permits and approvals required by any governmental agency which has jurisdiction over the location and/or construction of the additional facilities, *assuming the CPUC does not preempt such jurisdiction*, and must file an advice letter with the CPUC demonstrating compliance with this and other conditions. However, G.O. 159 further provides that *a cellular radiotelephone utility may file an application with the CPUC to preempt local jurisdiction* if that utility can demonstrate that it has provided the local agency with two or more acceptable sites, but is unlikely to obtain a permit for either site which will provide adequate coverage for the cell. To demonstrate that it is unlikely to obtain a permit, the

cellular utility must show that:

(1) One or more local agencies have denied the utility's application for a permit; or

(2) One or more local agencies have granted the utility a permit but with conditions as to location or configuration which the utility believes makes it infeasible to provide adequate coverage; or

(3) One or more local agencies have denied through de facto means the utility's application (by zoning ordinances, resolution, unreasonable delays, etc.). (CPUC G.O. 159, Section IV.B.)

The State of California, through its CPUC, has responded to protect the cellular telephone industry from unduly or onerously restrictive regulations imposed by the cities and counties of California which arguably could have the effect of barring or impeding construction of needed facilities. Local agencies are aware of G.O. 159. They know that a cellular company may seek to avail itself of the CPUC's jurisdiction, seeking to site and construct its facilities under the sheltering mantle of the CPUC if the local agency cannot or does not accommodate such siting or construction in a manner *feasible for the cellular utility*, as provided by G.O. 159. In addition, the CPUC left the door open to reopening the investigation which led to the issuance of G.O. 159. Any respondent in that rulemaking by written request may ask and the CPUC will consider reopening said self-initiated

investigation to examine whether G.O. 159 has served its purposes, and whether it must be revised to reflect technological changes in cellular facilities. (CPUC G.O. 159, Section IX.) It is reasonable to presume that cellular companies, and perhaps Petitioner CTIA, were respondents in that rulemaking.

Affected governmental entities, on their own behalf and in representing the interests of residents and businesses of a locality, or the **people** themselves, whether property owners or renters, whether young, old, or in between, should not be required to monitor the cellular telephone industry's intentions in their community by perusing applications for siting and constructing towers and transmitters which evidently would be filed or fought about before this Commission in Washington, D.C., or by waking up some morning to find out that a tower is going up outside their bedroom window.

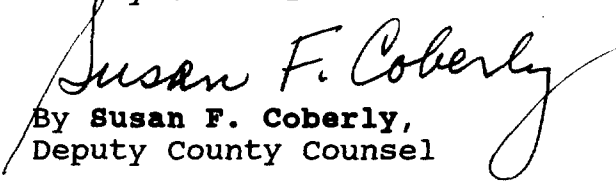
Federal preemption of state and local land use and other similar regulations, as requested, will burden millions of people who will be affected by the provision of **no** such regulation of this industry at the state and local level. The people have no industry association to speak for them. They depend on their cities, counties, and states to protect the public interest, including but not limited to those people and their families, their property values, and the general aesthetic through the use of well-drafted local community land

use, zoning, construction standards, and similar regulations. The people of Fresno County, California have a voice here and in Sacramento, our State's capital.

Compared to the effect on millions of ordinary citizens that federal preemption will cause, contrast the small effect on the burgeoning CMRS industry of having to be a responsible neighbor to the people in the communities those providers say they wish to serve. In California, the industry even has the CPUC as a champion against local regulations a cellular company perceives as having an onerous effect. Federal preemption would stifle that effort to provide fairness, as well.

Respectfully submitted,

**Phillip S. Cronin**  
County Counsel

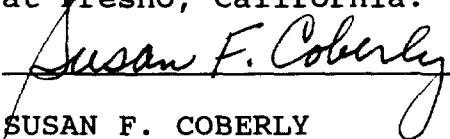
  
By **Susan F. Coberly**,  
Deputy County Counsel

Certification

I am a Deputy County Counsel for the County of Fresno, a political subdivision of the State of California, the party filing the opposition to proposed rulemaking herein, and am one of the attorneys assigned to represent the County of Fresno in this matter. I have read the foregoing opposition paper; I know the content thereof and know that to the best of my knowledge, information and belief there is good ground to

support the same, and that this opposition paper is not interposed for delay.

I declare under penalty of perjury that the foregoing is true and correct, and that this certification was executed on the 17th day of March, 1995, at Fresno, California.

  
SUSAN F. COBERLY  
Deputy County Counsel  
Attorney for the County of  
Fresno

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**PROOF OF SERVICE**

I, DEBRA C. LUCAS, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Fresno County Counsel, 2220 Tulare Street, Fifth Floor, Fresno, California, 93721. On March 17, 1995, I served the within documents:

**RESPONSIVE OPPOSITION TO PETITION FOR RULEMAKING FILED BY CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATIONS**

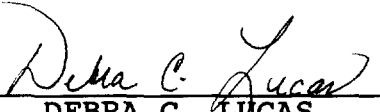
- ☒ by placing the document(s) listed above in a sealed envelope, and placing the same for mailing in the United States mail at Fresno, California, in accordance with the firm's ordinary practices, and addressed as set forth below.
- ☐ by transmitting via facsimile the above listed document(s) to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope, and placing the same for overnight delivery by Federal Express at Fresno, California.

Cellular Telecommunications Industry Associations  
Michael F. Altschul, Vice President  
General Counsel  
Randall S. Coleman, Vice President  
for Regulatory Policy and Law  
1250 Connecticut Avenue N.W., Suite 200  
Washington, D.C. 20036

State of California, CPUC  
ATTN: Ira R. Anderson, Jr.  
Commission's Safety and Enforcement Division  
550 Van Ness Avenue  
San Francisco, CA 94102-3298

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 17, 1995, at Fresno, California.

  
DEBRA C. LUCAS